



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4132

Objector: Bolton Council

Admission authority: Leverhulme Church of England and Community Trust for Rivington and Blackrod High School, Bolton.

Date of decision: 2 August 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2024/25 determined by Leverhulme Church of England and Community Trust for Rivington and Blackrod High Schools, Bolton.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Bolton Council (the LA), about the admission arrangements (the arrangements) for Rivington and Blackrod High School (the school) for September 2024. The objection is to a reduction in the school's published admission number (PAN) to 240.

2. The school is located in the LA's area. The parties to this objection are the LA, the diocese of Manchester and Leverhulme Church of England and Community Trust (the Trust). The Trust is the admission authority for the school.

Jurisdiction

3. The terms of the Academy agreement between the Trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board on behalf of the Trust (which is the admission authority) on that basis. The LA submitted their objection to these determined arrangements on 27 April 2023. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

5. The documents and information I have considered in reaching my decision include:
- a. the minutes of the meeting of the school's governing board at which the arrangements were determined;
 - b. the determined arrangements, which include a Supplementary Information Form;
 - c. the LA's form of objection dated 27 April 2023 and supporting documents;
 - d. the Trust's response to the objection and supporting documents, including a report by the head teacher to the school's governing board dated 14 January 2023;
 - e. a map of the area identifying the location of the school and its catchment area;
 - f. a copy of the consultation document; and
 - g. information available on the Department for Education Get Information About Schools (GIAS) and Schools Financial benchmarking websites.

The objection and other matters

6. The objection concerns the determination which reduces the PAN for the school from 300 to 240 for the admission year 2024/25 and whether the Trust and the school took proper account of evidence provided in the LA's response to the consultation regarding the effect of the reduction on the LA's ability to provide sufficient school places and ensure its statutory duty to provide a place for every child in its area requiring one.

7. When considering the arrangements as whole, I noted a number of respects in which the oversubscription criteria appeared not to comply with the Code, in particular, the school catchment area does not appear to be clear; the meaning of "sibling" did not appear to be clear; the oversubscription criteria only include a tiebreaker in relation to applications made under the catchment area criterion and not in relation to the other oversubscription criteria;

there was no explanation of how a child's home address is determined; and the school entrance from which distance will be measured was not clear.

Background

8. The school is a non-selective, mixed academy for pupils aged 11-18 years. The most recent Ofsted inspection in 2023 rated the school as "good"; a previous inspection in January 2020 rated the school as "requires improvement". The school has a Church of England religious character and is situated in the diocese of Manchester. I note from GIAS that the school's capacity is recorded 1888. The school's admission number for year 7 is, and has been for several years, 300. A PAN of 300 would support a total number of pupils in years 7 – 11 of 1500 and leave almost four hundred places for sixth form pupils.

9. The Trust is a multi-academy trust that includes two academies: the school and another non-selective secondary school in Bolton that does not have a religious character. The Trust, as admission authority for the school, has delegated to governing board of the school (the governing board) the task of determining the arrangements, including the PAN.

10. The school's oversubscription criteria are, in summary:

- a. looked after children and previously looked after children;
- b. children for whom there is a child protection plan;
- c. children who have an older sibling in years 7 -11 at the school;
- d. children living in the area of Blackrod or Horwich Town Councils (the catchment area);
- e. children with a medical need or disability;
- f. of the remaining places, 20% are allocated on the basis of commitment to the Christian faith, for which evidence is provided on a supplementary information form; and
- g. straight line distance between the child's home and the main entrance to the school.

11. Between 31 October and 12 December 2022, the Trust and the governing board undertook a formal consultation on a proposal to reduce the PAN for year 7 in 2024 to 240. The notice of consultation articulated the purpose of the proposal as follows:

"This reduction is to ensure the school can provide a consistent curriculum provision for all students.

Having a consistent number of students in each year group will allow the school to strategically plan and utilise its resources effectively.

A reduced number of students will allow the school to provide a more personalised and academic provision.”

12. The governing body of the school met on 1 December 2022, before the consultation had concluded. The minutes record a discussion of the progress of the consultation in the following terms:

“Pupil admission numbers were discussed. A consultation was in place to reduce the Published Admissions Number (PAN) from 300 to 240, and some feedback had been received. The reaction from the Local Authority had not been fully positive. It was noted that the reduction in the PAN would reduce the number of in-year admissions and would therefore support staff in the provision they could offer. There would not be a redundancy situation. It was explained that the Local Authority had calculated that there was a place shortage for year seven in 2023, and the Executive Headteacher explained that the increased population within the Local Authority was not in the RBHS locality. In-year admissions were also a concern for the Local Authority, but the location of RBHS was not ideal for students who would need to travel on multiple buses to be able to attend the school. The consultation was due to close during the week following the [governing board] meeting. A Governor asked whether the school would be able to move to a single-site school if the PAN was reduced.

It was confirmed that this was possible, but the difficulty was that owing to the location of Local Authority boundaries, the main site was located in Chorley and not in Bolton.”

13. A summary of the consultation responses is set out in a report by the head teacher to the governing board dated 19 January 2023 (the head teacher’s report). There were 69 responses, of which only 8 objected to the proposals. One of the objectors was the LA. The head teacher’s report includes quotes from 5 of the other responses, raising a number of concerns about the proposal. These included:

- the number of “international students” in the Bolton area was likely to increase demand for school places;
- the proposed reduction in PAN was below the average number of pupils admitted to year 7 in the preceding three years. The respondent suggested a smaller reduction in PAN should be considered; and
- the local population was likely to increase due to the planned construction of new housing in the local area in future years.

14. The outcome of consultation was discussed at a meeting of the Trust on 14 December 2022 and noted in the minutes as follows:

“The consultation had been to reduce the PAN from 300 to 240. The school had never reached its capacity of 300 students in each year group. The majority of

responses had been in favour of reducing the PAN. The only concern was with regard to the Sixth Form, as it would be important to ensure more students remained at the school after the end of year eleven. The Local Authority had sent a response following the end of the consultation period. The [Chief Executive Officer] had met with Local Authority representatives, and the discussion had been amicable and productive. It was explained that if the school were to become a single site school, it would be based within Chorley and not Bolton. The split site funding would also be lost.

It was explained that the planned reduction in the PAN would have little impact on funding and staffing.”

15. The arrangements for 2024/25 were formally determined at a governing board meeting on 19 January 2023, on the basis of the advice in the head teacher’s report. From the report, it is clear that the school was aware that there was a shortage of school places in the Bolton area before the consultation notice was issued. This information was relevant to the proposal. I would have expected the notice to include it, to enable consultees to properly understand the proposal and express their views on it, in accordance with the requirements that apply to public consultations set out in the judgement in R v Brent LBC ex p Gunning (1985) 84 LGR 168.

16. At some point (it is not clear when) before 19 January 2023, the school agreed the LA’s request to admit up to 330 pupils in September 2023, 30 over the determined PAN of 300. This is described in the report as an agreement “to increase the admission number”. The admission number for September 2023 is part of the arrangements determined on or before 28 February 2022. I infer from this that the school considered that it could accommodate up to 30 additional pupils in year 7 without causing prejudice to the provision of education or efficient use of resources at the school. It was in fact an agreement to exceed the PAN.

17. The school in its notice of consultation (and repeated in its response to my questions about admissions) stated that the average admissions over the past 3 years (2021-2023) was 244 pupils, only 4 more pupils than its new PAN. Whilst this is true, it is not the whole story. The report includes the census numbers of pupils on roll for each year between October 2019 and October 2022, which fluctuated between a high of 270 in 2020 and a low of 210 in 2021. In 2019 year 7 admissions were 257, rising to 270 in 2020 dropping to 210 in 2021 and rising again to 248 in 2022. The number of places allocated for 2023 is 293, though the school states that only 279 pupils have actually accepted places.

18. In only one year in the past five years has the number of pupils admitted in year 7 dropped below 240, namely in 2021. The LA in its objection stated:

“The 2021 intake is notably smaller. It was undoubtedly affected by the COVID pandemic (being the first full round of admissions since it began) but also the fact that the Ofsted grading for the school was published as “requires improvement” prior to the applications for that intake.”

Whether the LA’s assumption about the reasons for the dip in admissions in 2010 is correct or not, the data does not establish “a pattern of reducing pupil numbers”, as argued by the school (letter from Mr Roach CEO of the Trust to the OSA dated 23 June 2023).

19. The school provided slightly different admissions numbers when I asked for information about pupils admitted “in catchment” and those living outside the catchment area, which I have set out in the table below but again, these show that pupil numbers in year 7 were below 240 only in 2021/22:

Table 1: Proportion of pupils living out of catchment area and furthest distance from home

Admission year	2021/22	2022/23	2023/24 (projected)
Pupils living in catchment area	131	152	172
Pupils living out of catchment area	92	115	121
Total pupils admitted	223	267	293 ¹
Pupils living out of catchment as a percentage of pupils on roll	41%	43%	41%
Furthest distance between home and school for pupil living in LA’s area	8.032 miles	8.444 miles	9.58 miles

20. The head teacher’s report also includes information about projected pupil numbers at the school which is based on information about projected pupil numbers in the primary schools in its catchment area. The report notes that in October 2021, “year 7 admissions to [the school] equated to 84% of the year 6 cohort in the Horwich and Blackrod Parish School” and in the previous year, the corresponding figure was 77%. On the basis of predicted pupil numbers in the local primary schools, using those proportions, the report sets out predicted pupil numbers for admissions to the school for September 2023 and the subsequent six years to September 2029.

21. This would not be an unreasonable approach to calculating projected pupil numbers if the school’s intake were wholly or mainly drawn from its catchment area. However, as Table 1 illustrates, a considerable proportion of the intake (over 40 per cent) is drawn from

¹ In relation to the projected figures for 2023/24, the figure of 293 represents the total number of pupils allocated a place at the school by the LA. As at 23 June 2023, only 279 pupils had actually accepted places at the school.

outside the catchment area and some pupils travel over 8 miles to attend it. When considering how many places are needed at the school it is therefore necessary to consider the wider picture of demand for school places across the LA area.

22. The school has also provided useful information about in-year admissions in the last 2 academic years, set out in table 2:

Table 2: In-year admissions

	2021/22	2022/23
Year 7	9	13
Year 8	6	19
Year 9	15	37
Year 10	6	20
Year 11	0	7

23. This is, understandably, a concern to the school. The instability in pupil numbers, both the fluctuating admissions in year 7 and the high level of in year admissions will make planning very challenging. It is the case, however, that if these children who need a place in-year were not to join this school, then they would join one or more other schools who would face exactly the same challenges. To put it another way, significant numbers of children across the country move school outside the normal admissions rounds and have to be found school places.

24. The LA's position is set out in its response to the 2022 consultation.

“Rivington and Blackrod Academy HS is one of 20 secondary schools in Bolton, which provide a total of 4,284 Y7 intake places to meet the demands of transferring primary pupils each year as well [as] new pupils to Bolton. The school remains a key component in meeting the demands of all pupils in Bolton who require a secondary school place.

Bolton has seen a dramatic increase in the demand for secondary school places over the past 10 years. In September 2012, the Autumn Census return recorded 3,185 Y7 pupils on roll [in Bolton]. By September 2021, the Autumn Census return recorded that this had risen to 4,103 pupils, equating to an increase of almost 30%. At the same time, there remains great pressure for secondary school places across all year groups.

Looking ahead, the latest pupil projections suggest that demand for Y7 places are expected to rise to around 4,316 in September 2026, although the growth in demand

is not expected to be evenly spread between the intervening years, with some years experiencing a higher or lower demand than preceding years.”

25. In its objection, the LA provided the following data about demand for school places in the Bolton area:

“Included in the response was detail on the current shortfall of places across the local authority as projected from the May 2022 census data... shortfall is as follows across the authority, presuming a 2.5% operating surplus:

With Rivington and Blackrod at its current PAN of 300, current additional Y7 capacity required based on latest pupil projections	
September 2023	165 Places
September 2024	60 Places
September 2025	120 Places
September 2026	60 Places
September 2027	150 Places
Additional Y7 capacity required based on latest pupil projections if Rivington and Blackrod proposals proceed	
September 2023	165 Places
September 2024	120 Places
September 2025	180 Places
September 2026	120 Places
September 2027	210 Places

Consideration of Case

26. The school’s public consultation did not tell the full story in two important respects: firstly, it failed to place its proposal to reduce the PAN for year 7 in the context of demand for school places in the wider Bolton area from which it draws a considerable proportion of its intake. Secondly, it included the information regarding the average intake that, although true, did not fairly reflect the reality of actual numbers admitted to the school in year 7 in recent years because the time period selected gave undue weight to an anomalous year.

27. The failure to take proper account of the context in which the proposal to reduce the PAN was made was also reflected in the governing body’s reaction to the LA’s response to the consultation. The LA’s letter to the Trust of 9 December 2022 raised serious concerns

about the potential impact of the school's proposal on the LA's ability to deliver its statutory duties to provide sufficient school places for pupils in its area. The LA's concerns were summed up to the governing board as "not ... fully positive", which fails to do justice to the clear advice from the LA that:

"If the proposals proceed, the pressure placed on the local authority will compromise its ability to fulfil its statutory duty to ensure that there are sufficient places available."

28. The failure to consider the LA's concerns properly was repeated in the head teacher's report, which was considered at the governing body meeting at which the arrangements were determined. The report placed undue reliance on projections of pupil numbers based solely on projections of pupil numbers in local primary schools, to support a contention that "the projected cohort numbers ... show a downward trend". This is the reverse of what has actually happened in the past three years, where pupil numbers in year 7 have risen from 210 in October 2021, to 248 in October 2022 and 279 pupils will be admitted in September 2023. As the projected pupil numbers for subsequent years do not take any account of demographic information provided by the LA for 2024 or years after that, no reliance can be placed on them.

29. In short, by not taking account of relevant information provided by the LA about predicted pupil numbers across the whole Bolton area, the decision to reduce the PAN was not fully informed and proper consideration was not given to any alternative, for example reducing the PAN by the equivalent of only one class size instead of two.

30. Reductions in the PAN for schools that are undersubscribed are often justified on the grounds of financial necessity. The headteacher's report includes arguments relating to the alleged (positive) impact on school's budget of reducing the PAN, although no explanation is given of how the school's budget would be affected, and no figures are put on the potential "significant and persistent deficits" that are asserted will accrue if the PAN is not reduced. These assertions are at odds with a comment earlier in the report that "The school is funded based on actual pupil numbers on roll, rather than the PAN. Therefore, reducing PAN to a level which reflects actual numbers on roll will not have any financial impact." The Trust meeting where the issues was discussed, was told: "... the planned reduction in the PAN would have little impact on funding and staffing" and that no redundancies would be required.

31. I have considered information about the school's financial position that is available on [the DfE's website](#).

I note that in 2021/22 (the most recent year for which data is available) the school had revenue reserves of over £2 million and an in-year surplus. I therefore conclude that the school is successfully deploying staff flexibly to manage fluctuations in pupil numbers, although this does not mean it is not challenging. I have seen no evidence that a reduction in the PAN is required to address a projected deficit.

32. The picture that emerges from the minutes of the governing board meetings, the report and the information provided to me by the CEO of the Trust is that the reduction in

PAN is partly motivated by a belief that it “would reduce the number of in-year admissions” (governing board minutes 1 December 2022). I note that in-year admissions this year have been much higher than in the preceding year (96 in 2022/23, compared to 36 in 2021/22) and the school is finding that dealing with “unpredictable” pupil numbers makes organising staffing and curriculum planning challenging.

33. Reducing PAN will not, however, have any direct impact on in-year admissions to year groups other than year 7. The PAN, as paragraphs 1.2 and 1.4 of the Code make clear, applies only to the “relevant age group”, in this case year 7. The only ground on which in-year admissions to other year groups may be refused is “where the admission of another child would prejudice the provision of efficient education or the efficient use of resources” (paragraph 1.4 of the Code).

34. The school acknowledges that it has reduced its PAN below the number of children likely to apply for places at the school from 2024/25 onwards, although (on its figures) this will only happen in September 2025 “...where the cohort is projected to be slightly higher, and a potential intake of 246 pupils. Rather than displace these potential 6 pupils we would look to support increasing the admission number in that one year to accommodate all local pupils.”. The suggestion that only six children in September 2025 are likely to be displaced by the reduction is almost certainly an underestimate, because it does not take account of pupils outside the catchment area who are likely to seek places at the school and for whom places will be needed on the basis of the LA’s predicted pupil numbers.

35. I note that the LA said in its objection that:

“With regards to places offered across the borough, projections for 2023 showed that 4339 places would be required. In fact 4469 places were offered on 1 March 2023 for the September 2023 intake. This required the local authority to liaise with schools across the borough to make an additional 185 places available over and above usual PAN (20 more than expected). This also represents 3.4% growth on top of projections.”

36. This is the context in which the school will admit 279 pupils to year 7 in September 2023, 31 more than were on roll in October 2022. The school’s offer to consider making additional places available in 2025 does not provide certainty that children, who will otherwise be displaced by the reduction PAN, will be allocated places at the school or assist the LA to meet its statutory duties to ensure that sufficient places are available for pupils in their area.

37. I must also take into account the extent to which parental preferences may be frustrated by a reduction in PAN. The LA helpfully provided the following table setting out preferences for the school expressed in recent years:

Intake year	1 st preferences
2018	239
2019	185
2020	245

2021	170
2022	208
2023 (current)	241

I note that parental preferences are rising again, after a low in 2021 (consistent with the pattern shown by places allocated), and this year were above the reduced PAN for 2024/25. It is likely that the recent favourable Ofsted report will increase the school's popularity, and it will receive a greater number of first preferences for September 2024 and subsequent years.

Other Matters

38. Having considered the arrangements as a whole in accordance with section 88I(5) of the Act, it appears that there are respects in which the arrangements do not conform with requirements of the Code. I raised these concerns with the Trust, which responded:

“Thank you for raising these concerns, these will all be carefully considered and amendments proposed to the policy as required.”

39. I find that the school's admissions policy 2024/25 does not comply with the Code in the following respects:

- a. The oversubscription criterion which gives priority to children with older siblings at the school. does not comply with paragraph 1.11 of the Code. Paragraph 1.11 requires admissions authorities to “state clearly in their arrangements what they mean by ‘sibling’...”.

The wording used in the policy is: “Siblings can include full, step, half, foster and adopted brothers and sisters living at the same address”. The use of “can” suggests this is a non-exhaustive list of examples and therefore implies that there is scope for discretion to be exercised when determining whether the criterion is met.

- b. The oversubscription criterion that gives a priority to pupils who “reside at an address that pays a local parish precept to Blackrod or Horwich Town Councils” does not, as drafted, appear to comply with paragraph 1.9(f) of the Code, which prohibits giving “priority to children according to the occupational, marital financial or educational status of parents applying...”. It appears to discriminate between those parents who pay the precept as part of their council tax and those who are exempt. Children of parents in the latter group would not appear to be eligible for places at the school.

However, it does not appear that evidence of payment of the parish precept is in practice required when an application is made. The criterion appears to be treated by the school as simply defining its catchment area and that is how I have referred to it in this determination. This is however not clear from the

policy and therefore it does not comply with the requirement in paragraph 1.14 of the Code:

“Catchment areas must be designated so that they are reasonable and clearly drafted.”.

It is for the Trust to decide how to revise its arrangement so that the catchment area is clear whether by reference to a map, published as part of the admissions arrangements, on which the boundaries of the town councils and location of the school are clearly marked or by use of a comprehensive list of postcodes or roads or some other means.

- c. The final priority criterion provides that places are “...offered to children who live nearest the school. The distance will be measured in a straight line between the home address point to the designated main entrance of the school.”. This does not comply with the requirement in paragraph 1.13 of the Code that:

“Admissions authorities must clearly set out how distance from home to the school ...will be measured. This must include making clear how the ‘home’ address will be determined and the point(s) in the school...from which distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives part of the week with each parent.”

Firstly, the criterion does not include an explanation of how the child’s home address will be determined. Secondly, the school is a split site school with premises in Rivington and Horwich. It is not clear from the policy on which site the “designated main entrance to the school” referred to in the admission policy is located.

Paragraph 1.8 of the Code requires admissions arrangements to “include an effective clear and fair tiebreaker to decide between two applications that cannot otherwise be separated”. The oversubscription criteria must include a tiebreaker for each priority, in the event that the school is oversubscribed under any of them.

- d. When I checked the school’s website in April, the supplementary form that must be completed to provide evidence that the family and child are active worshipping members at a Christian church was not available. The form is part of the arrangements and must therefore be published with the admissions policy as part of the admission arrangements in accordance with paragraph 1.50 of the Code, that requires the determined admissions arrangements to be “published on the school’s website ... by 15 March in the determination year and continue [to be displayed] ...for the whole offer year...”. The school has now rectified this oversight.

Summary of Findings

40. For these reasons, I uphold the objection. I find that the governing body did not take account of all the relevant considerations, in particular the LA's response, when it determined to reduce PAN for year 7 to 240. The reduction in PAN in the circumstances is unreasonable and unfair to pupils who are likely to need a place at the school. It has the potential to frustrate the expression of parental preference contrary to section 86(1) of the Act, displacing children who would otherwise be allocated a place at the school and is not justified by the need to manage financial resources. Given the LA's assessment of the likely pressures on school places in the Bolton area in the immediate future, it is not clear to me that there would be enough other suitable school places for such children. A reduction in the PAN for the school is likely to exacerbate the challenges for the LA, clearly articulated in its objection, in meeting its statutory duty to ensure that sufficient school places are available for children in its area.

41. Further I find that the arrangements do not conform with the requirements of the Code in a number of respects, in particular:

- the school catchment area is not clear contrary to paragraph 1.14 of the Code;
- the meaning of "sibling" is not clear, contrary to paragraph 1.11 of the Code;
- a number of the oversubscription criteria do not include a tiebreaker, contrary to paragraph 1.8 of the Code; and
- for the purpose of measuring the distance between a child's home address and the school, there is no explanation of how a child's home address is determined and the designated main entrance of the school is not clear, contrary to paragraph 1.13 of the Code.

Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Leverhulme Church of England and Community Trust for Rivington and Blackrod High School, Bolton.

43. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

44. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 2 August 2023

Signed:

Schools Adjudicator: Helen Jeffrey